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No. _____

**IN THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT
NEW ORLEANS, LOUISIANA**

UNITED STATES OF AMERICA, Appellant

vs

ROY F. BRASHIER, Appellee

**ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF
MISSISSIPPI—JACKSON DIVISION**

MEMORANDA FOR THE CLERK
IN THE UNITED STATES
DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

No. 2167—CRIMINAL

UNITED STATES OF AMERICA, Plaintiff

ROY F. BRASHIER, Defendant

**HONORABLE JOSEPH E. BROWN, United States
District Attorney, Federal Building Jack-
son, Mississippi**

ATTORNEY FOR APPELLANT

**HONORABLE J. ED FRANKLIN, Attorney at Law,
1411-12 Deposit Guaranty Bank Building,
Jackson, Mississippi,**

ATTORNEY FOR APPELLEE

**IN THE UNITED STATES
COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 14089

UNITED STATES OF AMERICA, Appellant

ROY F. BRASHIER, Appellee

STIPULATION AS TO PRINTING OF RECORD

Subject to the approval of the court, it is hereby stipulated and agreed by and between counsel for the parties that only the following portions of the record on appeal received from the Clerk of the District Court need be printed supplemented by this agreement:

1. The indictment.
2. The motion to dismiss, without exhibits.
3. It is agreed that the typewritten record certified by the Clerk of the District Court constitutes the record on appeal and shall be considered by the court to the same extent as if it were printed; and that any party may print, as a part of or in connection with its or his brief, any portion of said typewritten record or may comment upon or otherwise use said typewritten record to the same extent as if it were printed.
4. This stipulation.
5. The opinion of the District Court sustaining the motion to dismiss, the order of the District Court dismissing the indictment and the notice of appeal and filing thereof are identical with the same items in cause No. 14067 which portions of the record in said cause are adopted as a part of the record in this case.

/s/ Joseph E. Brown
United States Attorney
Southern District of Mississippi
Attorney for Appellant
/s/ J. Ed Franklin
Attorney for Appellee

**IN THE UNITED STATES
DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

No. 2167—CRIMINAL

UNITED STATES OF AMERICA, Plaintiff

vs

ROY F. BRASHIER, Defendant

INDICTMENT

(FILED JULY 19TH, 1951)

THE GRAND JURY CHARGES:

1. That on or about the 10th day of April, 1951, at Jackson, and within the Southern District of Mississippi,

ROY F. BRASHIER,

The defendant herein, having duly taken an oath before a competent tribunal, to wit, a subcommittee of the Senate Committee on Expenditures in the Executive Departments, known as the Senate Subcommittee on Investigations, a duly created and authorized subcommittee of the United States Senate conducting official hearing in the Southern District of Mississippi, and inquiring in a matter then and there pending before the said subcommittee in which a law of the United States authorizes that an oath be administered, that he would testify truly, did unlawfully, knowingly and willfully, and contrary to said oath, state a material matter which he did not believe to be true, that is to say:

2. That at the time and place aforesaid, the said Senate Subcommittee inquiring as aforesaid was conduct-

ing a study and investigation of whether applicants for appointments to offices and places under the government of the United States had been, and were being solicited and required by numerous persons within the State of Mississippi to make political contributions and donations as a condition precedent to receiving such appointments, and as a consideration in return for promises to use their support and influence in obtaining said offices and places for applicants seeking appointment thereto; and to determine whether the laws of the United States had been violated in connection with such activities, the identity of any such persons engaged therein, and the extent to which such improper and corrupt activities affected the operation of Federal agencies.

3. That at the time and place aforesaid, the defendant

ROY F. BRASHIER,

duly appearing as a witness before the Senate Subcommittee and then and there being under oath as aforesaid, testified falsely before said Subcommittee with respect to the aforesaid material matter as follows:

SENATOR HOEY: Well, when you visited these men in the counties and made a proposition, what did you tell them you wanted them to do?

MR. BRASHIER: I told them I was setting up committeemen for each county, and there wasn't any pay in it at all, and they would get a letter, and anything that came up in that county, that they would be referred to either by telephone, or writing them, or wiring them, or something, from the Mississippi Democratic Committee.

It did not have anything to do with the OPS or the ESA, or whatever you call the other, I don't remember what they call it, it was in the paper, you see, some of them mentions that I contacted them on that, but so far as me telling about the OPS, it never was mentioned. I mean, they would mention it to me.

4. That the aforesaid testimony of the defendant as he then and there well knew and believed was untrue in that when he visited and contacted men in the various counties and talked to them about contributions to the Mississippi Democratic Committee he did discuss, mention, and tell them about OPS (Office of Price Stabilization), and certain offices, places, and jobs thereunder. (Sec. 1621, Title 18, U. S. C.)

COUNT II

THE GRAND JURY FURTHER CHARGES:

1. That at the time and place aforesaid, as is more fully set forth in Paragraphs 1 and 2 of the First Count, the allegations of which are hereby incorporated herein, the defendant

ROY F. BRASHIER,

duly appearing as a witness before the said Senate Subcommittee and being under oath as aforesaid, testified falsely before the said Senate Subcommittee with respect to the aforesaid material matter as follows:

SENATOR HOEY: Let's take it a step at a time. You told them they would be chairmen of the counties?

MR. BRASHIER: They would be committeemen building up the Democratic Party in each county in the State.

SENATOR HOEY: And you told them you wanted a contribution of how much?

MR. BRASHIER: I did not tell them how much. Anything they wanted to give, why, I would take it in.

2. That the aforesaid testimony of the defendant as he then and there well knew and believed was untrue in that he did in talking to numerous persons about being chairmen and committeemen in the various counties of the State of Mississippi tell them the amount of money he wanted them to contribute. (Sec. 1621, Title 18, U. S. C.)

COUNT III**THE GRAND JURY FURTHER CHARGES:**

1. That at the time and place aforesaid, as is more fully set forth in Paragraphs 1 and 2 of the first Count, the allegations of which are hereby incorporated herein, the defendant

ROY F. BRASHIER,

duly appearing as a witness before the said Senate Subcommittee and being under oath as aforesaid, testified falsely before the said Senate Subcommittee with respect to the aforesaid material matter as follows:

SENATOR McCLELLAN: And, as I understand it, you did not have to solicit any funds. Each one of them voluntarily suggested they wanted to make a contribution?

MR. BRASHIER: That is right. I just told them they could give whatever they wanted to.

2. That the aforesaid testimony of the defendant as he then and there well knew and believed was untrue in that those with whom he talked concerning contributions and funds did not voluntarily suggest that they wanted to make a contribution. (Sec. 1621, Title 18, U. S. C.)

COUNT IV**THE GRAND JURY FURTHER CHARGES:**

1. That at the time and place aforesaid, as is more fully set forth in Paragraphs 1 and 2 of the first Count, the allegations of which are hereby incorporated herein, the defendant

ROY F. BRASHIER,

duly appearing as a witness before the said Senate Subcommittee and being under oath as aforesaid, testified falsely before the said Senate Subcommittee with respect to the aforesaid material matter as follows:

SENATOR McCLELLAN: I think you testified that you did not represent to them that they could appoint the personnel of these offices that were set up?

MR. BRASHIER: I said they could when it was set up.

SENATOR McCLELLAN: I am talking about this Price Control Office and rationing specifically.

MR. BRASHIER: I didn't know anything about it, I really didn't. They say they saw it in the paper.

SENATOR McCLELLAN: You did not represent that to them?

MR. BRASHIER: No, sir.

2. That the aforesaid testimony of the defendant as he then and there well knew and believed was untrue in that he did represent to various persons that they could appoint the personnel in the Price Control and Rationing offices that were to be set up. (Sec. 1621, Title 18, U. S. C.)

COUNT V

THE GRAND JURY FURTHER CHARGES:

1. That at the time and place aforesaid, as is more fully set forth in Paragraphs 1 and 2 of the first Count, the allegations of which are hereby incorporated herein, the defendant

ROY F. BRASHIER,

duly appearing as a witness before the said Senate Subcommittee and being under oath as aforesaid, testified falsely before said Senate Subcommittee with respect to the aforesaid material matter as follows:

SENATOR HOEY: Didn't you also tell them they could get their money back from the people they appointed?

MR. BRASHIER: No, sir. I never dreamed of that.

2. That the aforesaid testimony of the defendant as he then and there well knew and believed was untrue in that

he did tell persons with whom he discussed contributions that they could get their money back from the people they appointed to offices and places on the County Ration Boards and under the Office of Price Stabilization. (Sec. 1621, Title 18, U. S. C.)

COUNT VI

THE GRAND JURY FURTHER CHARGES:

1. That at the time and place aforesaid, as is more fully set forth in Paragraphs 1 and 2 of the first Count, the allegations of which are hereby incorporated herein, the defendant

ROY F. BRASHIER,

duly appearing as a witness before the said Senate Subcommittee and being under oath as aforesaid, testified falsely before said Senate Subcommittee with respect to the aforesaid material matter as follows:

SENATOR HOEY: I will ask you if you did not tell them there would be ten to fifteen employees to appoint?

MR. BRASHIER: No, sir.

2. That the aforesaid testimony of the defendant as he then and there well knew and believed was untrue in that he did tell persons with whom he discussed Office of Price Stabilization and County Ration Boards that they would have ten to fifteen employees to appoint. (Section 1621, Title 18, U. S. C.)

COUNT VII

THE GRAND JURY FURTHER CHARGES:

1. That at the time and place aforesaid, as is more fully set forth in Paragraphs 1 and 2 of the first Count, the allegations of which are hereby incorporated herein, the defendant

ROY F. BRASHIER,

duly appearing as a witness before the said Senate Subcommittee and being under oath as aforesaid, testified

falsely before said Senate Subcommittee with respect to the aforesaid material matter as follows:

SENATOR MUNDT: Did you tell them that the position of supervisor of OPS was to be between 48 and 52 hundred dollars?

MR. BRASHIER: No, sir. I didn't know anything about that.

2. That the aforesaid testimony of the defendant as he then and there well knew and believed was untrue in that he did tell those with whom he discussed the position of Supervisor of OPS that the position of Supervisor was to be between 48 and 52 hundred dollars. (Sec. 1621, Title 18, U. S. C.)

COUNT VIII

THE GRAND JURY FURTHER CHARGES:

1. That at the time and place aforesaid, as is more fully set forth in Paragraphs 1 and 2 of the first Count, the allegations of which are hereby incorporated herein, the defendant

ROY F. BRASHIER,

duly appearing as a witness before the said Senate Subcommittee and being under oath as aforesaid, testified falsely before said Senate Subcommittee with respect to the aforesaid material matter as follows:

SENATOR HOEY: And that they could appoint them all?

MR. BRASHIER: No, Sir.

2. That the aforesaid testimony of the defendant as he then and there well knew and believed was untrue in that he did tell persons with whom he discussed positions as chairmen and supervisors of OPS County Ration Boards

that they, as chairmen and supervisors, could appoint all employees of said Boards. (Sec. 1621, Title 18, U. S. C.)

A TRUE BILL,
/s/ D. F. McCormick
Foreman

/s/ Joseph E. Brown
JOSEPH E. BROWN,
United States Attorney

/s/ Ben Brooks
BEN BROOKS
Special Assistant to the
Attorney General

(TITLE OMITTED)
MOTION TO DISMISS
(FILED SEPTEMBER 5, 1951)

The defendant moves that the indictment and each Count thereof be dismissed on the following grounds:

I.

The indictment does not state facts sufficient to constitute an offense an offense under Section 1621, Title 18 of the United States Code or under any other laws of the United States.

II.

Said indictment does not allege the essential elements of perjury, does not allege essential facts to support a verdict of perjury and does not sufficiently advise the defendant of the charge against him for his defense.

III.

The Senate Sub-Committee, before whom the alleged false answers were given, was not a competent tribune:

(a) The said Committee was making an investigation to ascertain if Section 215, Title 18, United States Code, which act is unconstitutional and not within the legislative powers of Congress and of no force and effect.

(b) No Committee of Congress has authority to determine whether the laws of the United States have been violated as alleged in the indictment.

(c) Neither Congress or any Committee of Congress has the power under the Constitution to investigate or examine private citizens of the United States to determine if they have violated the laws of the United States.

(d) The enforcement of the criminal laws of the United States is by the Constitution vested in the Executive Department, and all investigations or hearings to determine if such laws have been violated are vested in the Judicial Department and juries.

(e) Each and every question and in each Count of the indictment was directed to the defendant concerning which false answers are alleged to have been given was an inquiry by the Senate Committee as to whether Section 215, Title 18, United States Code, had been violated—being a statute prohibiting "acceptance or solicitation to obtain appointive public office." When said questions and answers without exception were propounded and the answers made as to the proposed appointment of persons named in the indictment to the office or place of County Chairman of Price Rationing Board, Office Price Stabilization, when no such office or place under the United States had been provided, set up, promulgated, at the time alleged in the indictment or since and the questions propounded and answers given were of and concerning an empty inquiry—a futile, void and useless inquiry and not the subject of perjury under the law.

IV.

The questions set out in the indictment and in each Count were propounded by the Senate Investigating Committee. In an investigation of and concerning the violation of Section 215, Title 18, United States Code, and as to whether or not the defendant had solicited contributions from persons under the promise to use his influence in having such person appointed Chairman of the County Ration Board for the county of his residence under Office

Price Stabilization, when there was no such office or place in existence nor has such been established since. The questions propounded and the answers made were not material to the inquiry.

V.

The interrogatories propounded and the alleged false answers given as shown by the indictment were made and given in a Senate Committee investigating the violation of Section 215, Title 18, United States Code for selling or soliciting the sales of public office or places under the United States; the defendant is under indictment in this court in Cause No. 2164 for conspiring to violate said law; that he cannot twice be put to trial on the same offense; that he cannot be put to trial for committing an offense against the United States and at the same time be held under indictment and put to trial for perjury for denying guilt. The two indictments are based upon the same facts with proof by the same witnesses and to require the defendant to go to trial on the indictment for perjury growing out of testimony in which he was required by the force of subpoena to give or be held in contempt of court would be placing him twice in jeopardy for the same offense.

VI.

The alleged false answers set out in the indictment were made in an investigation by the Senate Committee to determine if Section 215, Title 18, United States Code—a bribery statute had been violated. The answers alleged as false given by the defendant were in denial of the violation of said statute. The defendant is now under indictment for conspiracy to violate this Section in case No. 2164, on the Dockets of this court. The same facts by the same witnesses must support if at all both indictments. The defendant therefore cannot be put to trial for violating said Section 215 and at the same time be held and put to trial for perjury for denying guilt thereunder, when one of such charges is a misdemeanor and the other a felony. The defendant is subject to trial only for conspiracy to violate Section 215, and cannot be put to trial

for felony on the ground that his denial of guilt to misdemeanor is a felony.

/s/ J. Ed Franklin
ATTORNEY FOR DEFENDANT,
ROY F. BRASHIER
1411-12, Deposit Guaranty Bank Bldg.
Jackson, Mississippi

(TITLE OMITTED)

O R D E R

(FILED FEBRUARY 11, 1952)

This cause this day came on for hearing on the motion to dismiss in the above numbered and entitled cause, and the Court having heard and considered same fully, it is considered and so

Ordered,

that the motion to dismiss in the above numbered and entitled cause be and the same hereby is sustained.

ORDERED, this the 6th day of February, 1952.

/s/ Allen Cox
UNITED STATES DISTRICT JUDGE

ENTERED: COB 5 P 978

C E R T I F I C A T E

I, B. L. TODD, JR., CLERK of the United States District Court for the Southern District of Mississippi, do hereby certify that the foregoing pages contain a true and correct transcript of the record in the case of UNITED STATES OF AMERICA V ROY F. BRASHIER, CRIMINAL ACTION NO. 2167, now on appeal to the Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, as the same now remains of record in my office at Jackson, Mississippi.

Witness my hand and seal of this office, this the 29th day of April, 1952.

/s/ B. L. Todd, Jr.

B. L. TODD, JR., CLERK

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF MISSISSIPPI

(SEAL)

That thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of December 8, 1952.

UNITED STATES OF AMERICA,

No. 14089

versus

ROY F. BRASHIER.

On this day this cause was called, and after argument by Ben Brooks, Esq., Special Assistant to the Attorney General, for appellant, and Ben F. Cameron, Esq., for appellee, was submitted to the Court.

Judgment.

Extract from the Minutes of April 10, 1953.

UNITED STATES OF AMERICA,

No. 14089

versus

ROY F. BRASHIER.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Mississippi, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

"Rives, Circuit Judge, dissents."

Clerk's Certificate.

UNITED STATES OF AMERICA.

UNITED STATES COURT OF APPEALS,

FIFTH CIRCUIT.

I, Oakley F. Dodd, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 17 to 31 next preceding this certificate contain full, true and complete copies of the pleadings, record entries and proceedings, including the opinion of the United States Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 14089,

wherein UNITED STATES OF AMERICA is appellant, and ROY F. BRASHIER is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, numbered from 1 to 16 are identical with the printed record upon which said cause was heard and decided in the said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 21st day of April, A. D., 1953.

/s/ OAKLEY F. DODD

*Clerk, U. S. Court of Appeals,
Fifth Circuit.*

SEAL

Supreme Court of the United States**No. 767, October Term, 1952****UNITED STATES OF AMERICA, PETITIONER****v.****ROY F. BRASHIER***Order allowing certiorari***Filed June 15, 1953**

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.